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#13
PATENT 1/11/01
1340-1-016N

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICANT : ROGER NOVAK AND ELAINE I. TUOMANEN
SERIAL NO. : 09/305,984 EXAMINER : L. Lee
FILED : May 5, 1999 ART UNIT : 1645
FOR : NOVEL ANTIBIOTICS AND METHODS OF USING THE SAME

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(Signature and Date)

RESPONSE UNDER 37 C.F.R. 1.116

ASSISTANT COMMISSIONER FOR PATENTS
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In response to the outstanding final Office Action dated November 29, 2000, due for Response by February 28, 2001, and in accordance with Rule 116 of the Rules of Practice, please consider the following remarks and Exhibit A containing a journal article for purposes of allowance, or in the alternative, to narrow the issues on Appeal.

REMARKS

Claims 35-39, 68, and 69 remain pending. Reconsideration of this Application is respectfully solicited.

Rejection under 35 U.S.C. § 102(b)

The Examiner has maintained the rejection of Claims 34-39, 68, and 69 asserting that they are anticipated by Williamson and Tomasz under 35 U.S.C. § 102(b). The lynchpin of the Examiner's argument is the Examiner's assertion that "Novak *et al.* (1999) clearly indicate that vancomycin tolerance in mutant *Streptococcus pneumoniae* is due to the